

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.1779 of 2021**

Arising Out of PS. Case No.-61 Year-1999 Thana- LADANIA District- Madhubani

1. PRAYAG DAS Son of Late Ram Prasad Das Resident of Village - Hanuman Nagar, P.s.- Babubarhi, Distt.- Madhubani.
2. Pradeep Das Son of Late Ram Prasad Das Resident of Village - Hanuman Nagar, P.s.- Babubarhi, Distt.- Madhubani.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

**Appearance :**

|                      |   |                                                            |
|----------------------|---|------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Yogesh Chandra Verma, Adv.<br>Mr. Priyanka Singh, Adv. |
| For the Respondent/s | : | Mr. Binod Bihari Singh, APP                                |

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

ORAL ORDER

3      10-01-2022                      Heard Sri Yogesh Chandra Verma, learned counsel for the appellants and Sri Binod Bihar Singh, learned APP for the respondent.

Both the counsels for the appellants as well as for the State are submitted that in a case under Section 307 of the IPC read with other offences, the I.O. is required to be examined during trial.

In the present case admittedly the I.O. has not been examined and resultantly neither the F.I.R. was exhibited nor the M.L.R. were exhibited, the entire case has been closed by the learned Presiding Officer, F.T.C.-II, Madhubani in a slip shod manner, who holding the appellants guilty for the offence under

Sections 307, 341, of the IPC and Section 27 of the Arms Act while acquitting them of the offence is under Section 149/307 of the IPC.

In a trial where the prosecution is required to exhibit the F.I.R., the site plan and medical reports of the injured. For the purpose the Doctor and the I.O. are the essential witnesses of prosecution. Hence, they cannot be ignored and left out for any reason. If, they are not appearing, the trial court is bound to call them firstly by bailable warrant or if not appearing then through non-bailable warrants. Justice is not only required to be done, but seems to be done. It is the basic fulcrum on which the entire criminal jurisprudence rests.

Keeping in view the above and considering the slipshod manner for which the concerned Fast Track Court has dealt with the case, it would be appropriate in the interest of justice and law that the case is remanded back to the learned Sessions Judge, Madhubani to decide the case afresh on merits by a regular court after examining the I.O., whose presence shall be secured by any of the modes as noted above. The Doctor shall also be summoned and is required to be available for his evidence, whereafter again defence as well as the prosecution shall be given liberty of hearing and the case shall be decided

afresh without being prejudiced by the judgment passed earlier on 05.02.2021.

Accordingly, the judgment dated 05.02.2021 is set aside, this appeal is accordingly decided remanding the case with direction to the learned Sessions Judge as above. The Court shall conduct the trial after examining I.O. and Doctor and expeditiously dispose of the case preferably within a period of four months from the date of receipt of the order of this Court. The appellants shall remain on bail as they were during course of trial and shall submit their bail bonds accordingly and shall co-operate in disposal of the appeal accordingly.

In view of setting aside of the judgment passed by the learned Presiding Officer, FTC-II, Madhubani, the appellants, who are presently on bail shall be released on bail on furnishing bail bonds of same amount as earlier directed.

Record of the case be sent to the trial Court as above.  
Appeal stands disposed off accordingly.

**(Sanjeev Prakash Sharma, J)**

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